No. 494

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

PURITAN CHURCH BUILDING FUND, HARRISON PARKER AND EDITH S. PARKER, Trustees, *Petitioner*

v.

UNITED STATES OF AMERICA, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S BRIEF IN REPLY TO THE RESPONDENT'S IN OPPOSITION

PURITAN CHURCH BUILDING FUND
REV. HARRISON PARKER
EDITH S. PARKER
Trustees

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The Petition for Writ of Certiorari and Respondent's Brief in opposition thereto present questions of much moment.

The arguments advanced by Respondent's brief raise additional issues from those presented to the

Court of Appeals. In its present brief Respondent says:

> "(1) This taxpayer, Puritan Church Building Fund, was not a party to the proceeding in Illinois. (2) No receiver had been appointed for the Building Fund or its trustees, (3) The receiver for Puritan Church did not take action to obtain possession of this taxpayer's property, and had receivership proceeding been brought the District Director's tax claim would in any event, have had priority of the claims of general creditors".

As stated above the Respondent relied on the Doctrine of Res Judicata; The position of Respondent is therefore expanded to include the issues enumerated above.

It has always been the position of Petitioner that the issues are broad and in consequence thereof Petitioner is entitled to a jury trial under the 7th Amendment to the Federal Constitution in order to explore the facts and develop the issues. This Court should grant certiorari in order that a full and complete argument may be had on all the issues. In the light of the facts contained in the petition and the tacit admissions of Respondent, a re-examination of the question of transferee liability under Section 6901 of the Internal Revenue Code, 1954, should be had. It is the purpose of Petitioner, in this Reply Brief, to show hereinbelow the fallacies and untenability of the arguments advanced by Respondent in its brief filed herein.

2. Lack of Jurisdiction of Subject Matter Permits of Collateral Attack on Judgment

Petitioner reasserts that Section 6871 of the Internal Revenue Code, 1954, ousted the Tax Court of jurisdiction. Where a court is without jurisdiction of the subject matter, its judgments are a complete nullity and may be collaterally attacked. *United States* v. *U. S. Fidelity Co.,* 1940, 309 U.S. 506.

3. Puritan Church Building Fund, Transferee, Was a Party to Receivership

Respondent argues that the Petitioner was not a party to the Receivership, therefore, the Receivership was, in applicable to Petitioner. It is conceded, however, that both the Tax Court and the decree oppointing the Receiver, treated Petitioner as a privy of the Puritan Church—the Church of America. See Tax Court decision (1951, P-H T.C. MEMORANDUM DECISIONS, Par. 51,151, and *Kimbrough* v. *Parker,* 344 Ill. 483, 101 N.E. 2d 617.

The decision of the Tax Court holds that Petitioner is a transferee of Puritan Church—the Church of America, and the decree of the Illinois Court gave the Receiver jurisdiction over all assets of the Puritan Church—the Church of America. See, *Mathias* v. *Tegaloff,* 51 A. 2d 654, 187 Md. 690, *Alexander* v. *Hillman,* 296 U.S. 222 and *Albuquerque Nat'l. Bank,* v. *Citizen Nat'l. Bank,* 5 Cir., 212 F. 2d 943.

4. Receiver Failed to Take Action to Obtain Possession

The Respondent says that the Receiver failed to take action to obtain Possession. This argument implies that the jurisdiction under 6871 of the Internal Revenue Code is dependent upon the action

of the Receiver after appointment. The language of the Statute is positive, it says:

> "but no petition for any such redetermination shall be filed with the Tax Court . . . after appointment of the Receiver."

The Statute affords Respondent the right to file its claim with the Receiver. (Sec. 6871(b)). So there is no justification for the argument that the Receiver failed to seek possession of the $106,000.00; when Respondent was equally derelicted in not filing its claim with the Receivers. See, *Cohen* v. *U. S.*; 1 Cir., 115 F. 2d 505, *Kelly* v. *U. S.*, 10 Cir., 90 F. 2d 73, *In re Wolslaged*, (D.C. Ohio) 104 F. Supp. 68 and *In re Kepp Elec. etc.*, (D.C. Minn.), 98 F. Supp. 53

5. Priority of Tax Claims

Respondent further argues that if the Receivership proceeding had been brought it's tax claim was preferred under the law. The answer to this Argument is that it created a feigned issue. The Statute, Section 6871 of the Internal Revenue Code, does not provide for *priority* of Claims or liens. The Statute is designed to afford a forum where claims may be presented and determined when the taxpayer's assets have been placed in receivership.

In support of this feigned issue the Respondent has cited the case of *U. S.* v. *Security Trust & Savings Bank*, 340 U.S. 47. This case holds that a Social Security tax lien filed subsequent to a State's Conditional lien has priority over the latter. The State lien in question was dependent upon a subsequent judgment on the part of the

lienor for its consummation. In the case of *Illinois* v. *Campbell*, 329 U.S. 362, at page 374 this Court makes it clear as to what is necessary to give priority to liens. The determining factor is the decree of the State Court creating the receivership. Here in the instant Petition the decree of the Illinois Court creates a constructive trust and impowers the receiver to collect all assets of the taxpayer wherever located. The decree directed that these assets be returned to the Puzzle Contestants. Under the Illinois decree there were more than $230,000.00 of Puzzle Contest Funds to be returned to the Contestants. The taxpayer was ordered by this decree to turn this money over to the receiver. Under the decision of this Court in the case of *Commissioner* v. *Wilcox*, 327 U.S. 404, these funds were not income and were not subject to taxation.

In the light of the foregoing Petitioner feels that the jurisdiction of this Court is properly invoked. Petitioner asserts that the questions here presented are of such character that a construction of Section 6871 of the Internal Revenue Code should be had by the highest Court of the land. It is to this end that Petitioner addresses itself.

CONCLUSION

The granting of Certiorari will afford both sides adequate opportunity to fully explore all issues and obtain a much needed expression of this Court on the issues presented.

Respectfully submitted,

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